UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA - v. - TYRONE GRAY, Defendant.	S2 15 Cr. 95 (AJN)

SENTENCING MEMORANDUM OF THE UNITED STATES OF AMERICA

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PRELIMINARY STATEMENT

The defendant in this case, Tyrone Gray, is scheduled to be sentenced on March 20, 2017. The Government respectfully submits this memorandum in advance of that sentencing and in response to Gray's sentencing memorandum, which requests a "substantial variance" from the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") range, which the United States Probation Office calculates to be 100 to 125 months' imprisonment.[1] For the reasons that follow, the Government disagrees and respectfully requests that the Court impose a sentence within the range of 100 to 108 months' imprisonment. Gray was an associate of a violent street gang—the Big Money Bosses ("BMB" or the "Gang")—with which he sold crack and carried guns. A downward variance would not achieve the purposes of the statutory sentencing factors, especially the need to reflect the seriousness of the offense and Gray's history and

[1] As detailed below, this calculation differs from the parties' stipulated Guidelines range because it takes into account a juvenile adjudication about which counsel was not previously aware. The Government is prepared to address this discrepancy upon inquiry of the Court. *See United States* v. *Kilpatrick*, -- Fed. App'x --, 2016 WL 6518802, at *3 (2d Cir. Nov. 1, 2016) (holding that Government breached plea agreement by bringing an error in the parties' Guidelines calculation to the attention of the Court).

characteristics, provide just punishment, and afford adequate deterrence to criminal conduct. A sentence within the stipulated Guidelines range is necessary to send the message that selling crack with a violent street gang—and, especially, carrying guns—will be met with serious consequences.

I. Procedural History

On April 27, 2016, the S2 Indictment in this case was unsealed, charging 63 members and associates of BMB with: (1) racketeering conspiracy, in violation of Title 18, United States Code Section 1962; (2) narcotics conspiracy, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), and 846; (3) narcotics distribution, in violation of Title 21, United States Code, Section 860; and/or (4) firearms discharge, in violation of Title 18, United States Code, Section 924(c)(1)(A)(iii).

On September 26, 2016, Gray pled guilty to Count One of the S2 Indictment in this case, which charged him with racketeering conspiracy, in violation of Title 18, United States Code, Section 1962(d). (PSR ¶ 8.)

II. Offense Conduct

A. Background

Beginning in December 2014, the New York City Police Department, the Drug Enforcement Administration, Homeland Security Investigations, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives conducted an investigation into two rival street gangs—BMB and the 2Fly YGz ("2Fly")—that were operating in the Bronx, New York. The investigation revealed that since at least in or about 2007, up until in or about 2016, members of BMB and 2Fly were involved in a variety of racketeering acts, including murders, attempted murders, robberies, narcotics trafficking, bank fraud, and counterfeit currency offenses.

B. BMB

The structure of BMB is described accurately in the PSR at paragraphs 11-20.

BMB was a subset of the "Young Bosses," or "YBz" street gang, which operates throughout the New York City area. BMB—whose members also sometimes refer to themselves as the "Money Making Mafia" or "Triple M"—operated primarily on White Plains Road from 215th Street to 233rd Street in the Bronx, which is a long stretch of road under a subway train overpass that is hedged on each side by single-family homes and local commercial establishments. BMB's narcotics trafficking activity was based principally in the vicinity of White Plains Road and 224th Street, an open-air drug spot that was referred to by gang members as the "Forts." BMB members sold drugs and down White Plains Road, however, including at a spot on 219th Street and a house on 230th Street. BMB members sold crack cocaine, marijuana, and prescription pills, including Percocet pills (i.e., oxycodone). BMB members kept firearms at each of these White Plains Road locations. BMB members also operated a drug spot on Boston Road and Eastchester Road in the Bronx, which they refer to as "B Road." BMB members who worked principally at the B Road spot typically refer to themselves as "Blamma." Generally speaking, BMB members were encouraged to continue openly "jacking," or proclaiming their membership in the gang, and many did so not only in person but also through social media websites such as Facebook.

In addition to its narcotics trafficking, BMB members and associates engaged in acts of violence, including shootings, stabbings, and gang assaults; these acts of violence protected the power of the gang, deterred attacks from rivals, and secured the gang's territories and drug spots. Moreover, members who engaged in a sufficient amount of violence could earn a leadership position, which was referred to as a "Big Suit." Members with "Big Suit" status were further subcategorized as, among other things, "Burberry Suits," "Louis Suits," "Gucci Suits," Ferragamo Suits," and "Sean John Suits," in order to signify their relative rank in the gang. Among other things, a BMB member with "Big Suit" status had the authority to recruit other individuals into the gang. Two of the highest-ranking "Big Suits" in BMB were NICO BURRELL, a/k/a "Zico Nico," and DOUGLAS MCLARTY, a/k/a "Q Don." Both BURRELL and MCLARTY enhanced their status in the gang, in part, by committing attempted murders when they were each juveniles.

Members of BMB rose in status and rank within the gang not only by engaging in acts of violence, but also by maintaining their membership in the gang for a long period of time. Members who were loyal associates for a substantial amount of time are referred to as "Day One Niggas," meaning that they have been associating with the gang since its earliest days. For example, in a posting on Facebook on July 7, 2013, BMB member RASHEID BUTLER, a/k/a "Rah," wrote: "i love my Day1 Niggas that was here since this #TripleM Shit 1ST STARTED." Similarly, BMB leader NICO BURRELL, a/k/a "Zico Nico," discusses the "Day One" concept in a rap video posted on YouTube in December 2015 and entitled "Live From Gutter." In the video, BURRELL raps, "No new niggas, only day one / I know they ain't tellin' if that day come," after which another rapper repeats in the background, "no snitchin.'"

BMB has, more generally, developed a gang norm against "snitchin,'" or cooperating with law enforcement. For example, a BMB associate posted on Facebook on July 20, 2011, "Like QuDOn Said 'No Snitchin Policy'"; the reference to "QuDOn" is a reference to MCLARTY, who is one of BMB's leaders and whose alias is "Q Don." BMB's norm against "snitchin'" was fostered through YouTube videos and social media postings, including postings in which gang members are praised for their refusals to cooperate with law enforcement in particular instances. The norm is also enforced through disparagement of and threats of violence against BMB members who are suspected of having violated the norm by cooperating. During the course of this investigation, law enforcement learned of at least one instance in which a BMB member's home was fired upon because he made a statement to law enforcement about individuals with whom he had committed a robbery. During another instance, the child of a suspected cooperator in this case was threatened and spat upon in the street. The norm against cooperation facilitates the gang's criminal enterprise and is one of the reasons why members of BMB tend to commit their robberies and fraud offenses with other members of BMB.

Many of the specific acts of violence committed by BMB members related to its longstanding rivalry with 2Fly, which is based principally in the nearby Eastchester Gardens public housing development ("Eastchester Gardens"), but which also has members who live in the "Valley" area just east of BMB's "B Road" spot on Boston Road and Eastchester Road. BMB also has developed rivalries with other street gangs in the northern Bronx, including the "Young Shooter Gang," or "YSGz," which is based in the Edenwald public housing development ("Edenwald"), and the "Slut Gang," which is based in the Boston-Secor public housing development ("Boston-Secor"). In connection with these rivalries, BMB members developed a practice of "mobbing," meaning to gather in large groups and travel to the base of operations of a rival gang to engage in violence there. Members of rival gangs also sometimes went "mobbing" and attack or attempt to attack BMB at its bases of operations. Videos of "mobbing" incidents were posted on YouTube. The close proximity of the BMB, 2Fly, YSGz, and Slut Gang bases of operations—all of which are in or on the border of the New York City Police Department's 47th Precinct—contributed to the frequency of acts of violence.

In addition to acts of violence, members and associates of BMB promoted their gang and disparaged rival gang members by highlighting a distinguishing feature of BMB: it is not based in a housing development, as are its principal rivals 2Fly (in the Eastchester Gardens), YSGz (in Edenwald), and the Slut Gang (in Boston-Secor). As noted above, BMB principally operated along White Plains Road, a long stretch of road hedged on each side by single-family homes and local commercial establishments. The name of the gang ("Big Money Bosses") and the other allusions to wealth that the gang employs (for example, the brand-name clothing retailers used to identify leadership positions) all serve to underscore this difference. In addition, members and associates of BMB have publicly mocked the living conditions of the housing developments in which many of their rivals live. For example, in a Facebook post on July 10, 2014, BMB member DONQUE TYRELL, a/k/a "Polo Rell," posted a photograph of a young child laying on a bed and covered with cockroaches, with the caption "MEANWHILE IN EDENWALD." In connection with the posting of this picture, TYRELL wrote, "Dirty ass project," followed by six smiley-face "emoticons." Similarly, in a Facebook posting on May 28, 2014, BMB member MASHUD YODA, a/k/a "Papa Ola," writes, "No Lie ECG [*i.e.*, the Eastchester Gardens] The Dirtiest PROJECTS UPTOWN . . . . Like OBAMA Said CHANGE But I Guess He forgot Bout ECG !!"

Consistent with this feature of BMB, members and associates of the gang engaged not only in narcotics distribution and robberies to enrich and distinguish its members from rivals, but also engaged in a variety of frauds, including bank fraud and counterfeit currency offenses. To perpetrate some of these fraud offenses, BMB members and associates often employed their girlfriends and female acquaintances.

C. Gray's Role

Gray was not a formal member of BMB, but he sold crack—at the retail level—with members and associates of BMB at the Gang's "Forts" drug spot, as well as from a home on White Plains Road that belonged to the father of co-defendant Javone Pearce. (PSR ¶ 25.) Gray has been arrested multiple times at or near BMB drug spots with crack, including an arrest in 2016 near the Forts with co-defendants Bradley Wilson and Richard Montague. (PSR ¶ 27.) Gray was also intercepted on a wiretap in this case discussing narcotics transactions with co-defendant Richard Phillips. (PSR ¶ 26.) Gray agrees that he is responsible for the sale of between 196 and 280 grams of crack.

Even more concerning, Gray carried guns in furtherance of his criminal activity. For instance, on May 26, 2012, Gray was seen by police speeding away from a hit and run accident where people were hurt. (PSR ¶ 23.) Gray was stopped near a BMB drug spot, when he ran away from the police and attempted to throw away a gun, which was recovered by the police. (PSR ¶ 23.)

Gray also participated in a shooting in Harlem on April 27, 2016, the day of the takedown in this case. (PSR ¶ 24.) Although he was not the shooter himself, he was with the shooter, Dwayne Johnson, with whom he fled the scene and was arrested moments later. (PSR ¶ 24.) Although the Government cannot prove at this time by a preponderance of the evidence that the shooting itself was in furtherance of the racketeering conspiracy—in part because of its location and the identity of the other participant in the shooting, Dwayne Johnson, whom the Government has not linked to BMB—it is another example of Gray's involvement in firearms offenses that the Court can properly take into account under 3553(a).

III. The Defendant's Criminal History

Gray has a significant criminal history.

As stated above, pursuant to *Kilpatrick*, the Government is prepared to address the conviction described at paragraph 45 of the PSR, about which counsel was not aware at the time of the Plea Agreement in this case.

On May 26, 2012, Gray was arrested in connection with his flight from a scene of a hit and run with a loaded gun, described above, which resulted in a year of imprisonment. (PSR ¶ 46.)

On October 17, 2013, Gray was arrested after he was found with crack cocaine in the vicinity of a BMB drug spot, which resulted in a year of probation. (PSR ¶ 47.)

As Gray admitted in the Plea Agreement, he continued to commit crimes—such as dealing crack and possessing guns—while under judicial supervision, *e.g.*, his term of probation.

IV. The PSR and Guidelines Calculation

The PSR calculates the same total offense level as the parties did in the Plea Agreement, but accords two additional criminal history points for the conviction described at paragraph 45. Accordingly, the PSR calculates Gray's Guidelines range as 100 to 125 months' imprisonment, while the Plea Agreement calculated the range at 87 to 108 months.

3553(a) ARGUMENT

For the reasons that follow, a sentence within the range of 100 to 108 is necessary to meet the statutory sentencing factors, in particular to provide just punishment and afford adequate deterrence to criminal conduct.

It is bad enough that Gray was a crack dealer with a violent gang, spreading poison that destroys families and communities and fuels violence. But Gray was not merely a drug dealer—he possessed loaded guns in connection with his crimes. In 2012, for instance, he fled the scene of a hit and run accident, leading the police on a chase until he finally threw a loaded gun in an effort to prevent law enforcement from finding it. This is not conduct consistent with life in a civilized society. Fleeing from car accidents, leading police on a high-speed chase, and possessing and throwing loaded guns is extremely serious conduct. Gray was shown leniency for this conduct—sentenced to only one year in prison—but was totally undeterred. He continued selling drugs, carrying guns, and associating with BMB. He was arrested with crack in 2013 and participated in the shooting in Harlem in 2016.

Gray has not identified any particularly compelling mitigating factors in favor of the variance he seeks. There is nothing so unusual in his background that would excuse or justify his crimes—and there is an overriding interest in punishing firearms offenses, which are a scourge on our community. Under the circumstances, a sentence within the range of 100 to 108 months' imprisonment is necessary to meet the statutory sentencing factors.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court impose a sentence within the range of 100 to 108 months.

Dated: New York, New York
March 16, 2017

Respectfully submitted,

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